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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 96-482

FILE COPY

EXPORT ADMINISTRATION ACT OF 1979

SEPTEMBER 26, 1979.—Ordered to be printed

Mr. BINGHAM, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 737]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 737) to provide authority to regulate exports, to improve the efficiencies of export regulation, and to minimize interference with the ability to engage in commerce, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1979".

FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

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(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, which would strengthen the Nation's economy.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can curtail the efforts of American business to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to achievement of a positive balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

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(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States——

(A) to oppose restrictive trade practices or—boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make every reasonable effort to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before resorting to the imposition of controls on exports from the United States. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

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(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitment in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

GENERAL PROVISIONS

SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.

(3) A general license, authorizing exports without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) COMMODITY CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "commodity control list") consisting of any goods or technology subject to export controls under this Act.

(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that adequate evidence has been

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presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States.

(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of the business sector in order to obtain their views on export control policy and the foreign availability of goods and technology.

NATIONAL SECURITY CONTROLS

SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2)(A) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(B) Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of

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the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restriction, if appropriate.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States. Such regulations shall not be based upon the assumption that such effective safeguards can be devised.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—In administering export controls for national security purposes under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence.

(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the commodity control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

(3) The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulations shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to

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those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendations received from any agency.

(d) MILITARY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibilities for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment, and

(C) goods accompanied by sophisticated operation, application, or maintenance know-how,

which are not possessed by countries to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1980.

(5) The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.

(6) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.

(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license in lieu of a validated license.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

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(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.

(4) Not later than July 1, 1980, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.

(f) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that denial of the license would be ineffective in achieving the purpose set

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forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with respect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.

(4) In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to countries to which exports are controlled under this section and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(5) In order to further carry out the policies set forth in this Act, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.

(6) Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of Export Administration concerning foreign availability of goods and technology subject to export controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

(g) INDEXING.—In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department

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or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Department of Commerce, Defense, and State and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of his Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, and (D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committtee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of two years, unless extended by the Secretary for additional periods of two years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

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(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee, adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committtee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigate such availability, and if such availability is verified, the Secretary shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.

(i) MULTILATERAL EXPORT CONTROLS.—The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understanding, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.

(4) Agreement on more effective procedures for enforcing the export controls agreed to pursuant to paragraph (3).

(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which, for commercial purposes, enters into any agreement with any agency of the government of a country to which exports are restricted for national secuirty purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties)

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calling for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency to the Secretary.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions.

(l) DIVERSION TO MILITARY USE OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence that goods or technology, which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes, have been diverted to significant military use in violation of the conditions of an export license, the Secretary, for as long as that diversion to sifnificant military use continues—

(A) shall deny all further exports to the party responsible for that diversion of any goods or technology subject to national security controls under this section which contribute to that particular miltary use, regardless of whether such goods or technology are available to that country from sources outside the United States; and

(B) may take such additional steps under this Act with respect to the party referred to in subparagraph (A) as are feasible to deter the further military use of the previously exported goods or technology.

(2) As used in this subsection, the terms "diversion to significant military use" and "significant military use" means the use of United States goods or technology to design or produce any item on the United States Munitions List.

FOREIGN POLICY CONTROLS

SEC. 6. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), or (8) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

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(2) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (e). Any such extension and any subsequent extension shall not be for a period of more than one year.

(3) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(4) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(b) CRITERIA.—When imposing, expanding, or extending export controls under this section, the President shall consider—

(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

(5) the ability of the United States to enforce the proposed controls effectively; and

(6) the foreign policy consequences of not imposing controls.

(c) CONSULTATION WITH INDUSTRY.—The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.

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(*d*) *ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.*

(*e*) *NOTIFICATION TO CONGRESS.—The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 7(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying—*

(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and

(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.

(*f*) *EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES.—This section does not authorize export controls on medicine or medical supplies. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act.*

(*g*) *FOREIGN AVAILABILITY.—In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.*

(*h*) *INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (f), and (g) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.*

(*i*) *COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before any license is*

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approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

(1) Such country has repeatedly provided support for acts of international terrorism.

(2) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(j) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(k) CONTROL LIST.—The Secretary shall establish and maintain, as part of the commodity control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. Such goods or technology shall be clearly identified as subject to controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

SHORT SUPPLY CONTROLS

SEC. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties

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to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic suply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be deevloped, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may transmit a written petition to the Secretary requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action re-

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quested. The petition shall include any information reasonably available to the petitioner indicating (i) that there has been a significant increase in relation to a specific period of time, in exports of such material in relation to domestic supply, and (ii) that there has been a significant increase in the price of such material or a domestic shortage of such material under circumstances indicating the price increase or domestic shortage may be related to exports.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall (A) include the name of the material which is the subject of the petition, (B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States, (C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and (D) provide that interested persons shall have a period of 30 days commencing with the date of publication of such notice to submit to the Secretary written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved. At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall—

(A) determine whether to impose monitoring or controls, or both, on the export of such material, in order to carry out the policy set forth in section 3(2)(C) of this Act; and

(B) publish in the Federal Register a detailed statement of the reasons for such determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days following the publication of such proposed regulations, and after considering any public comments thereon, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses thereto, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within six months after consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence

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over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls on a temporary basis after a petition is filed under paragraph (1)(A) but before the Secretary makes a determination under paragraph (3) if the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, unless the requirements of paragraph (2) of this subsection are met.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President makes and publishes express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within three months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

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(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President reports such findings to the Congress and the Congress, within 60 days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) REFINED PETROLEUM PRODUCTS.—(1) No refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than five days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory

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of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) AGRICULTURAL COMMODITIES.—(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3) If the authority conferred by this section or section 6 is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exporation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2)

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of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shal apply only with respect to barter agreements entered into after the effective date of this Act.

(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs may be exported from the United States.

(2) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(3) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(4) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

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(A) *lumber without wane;*
(B) *chips, pulp, and pulp products;*
(C) *veneer and plywood;*
(D) *poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or*
(E) *shakes and shingles.*

(j) EXPORT OF HORSES.—(1) *Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, or any of its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.*

(2) *The Secretary, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.*

FOREIGN BOYCOTTS

SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) *For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:*

(A) *Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.*

(B) *Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.*

(C) *Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.*

(D) *Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or*

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supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such

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individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly speecifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any or other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (exepressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) FOREIGN POLICY CONTROL.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental

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subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

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(2) The effect of finding favor in the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS

SEC. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) INITIAL SCREENING.—Within ten days after the date on which any export license application is submitted pursuant to subsection (a) (1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) ACTION ON CERTAIN APPLICATIONS.—In each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 90

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days after a properly completed application has been submitted pursuant to this section.

(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—In each case in which the Secretary determines that its is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 30 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2) If the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 30-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) ACTION BY THE SECRETARY.—(1) Within 90 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 90-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations.

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant of the specific questions raised and any such negative considerations or recommendations, and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.

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(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within five days after such determination is made, of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within five days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor.

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 30 days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the militray potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

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If the President notifies the Secretary, within 30 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.

(h) MULTILATERAL CONTROL.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 60 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 60-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 60-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) RECORD.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the

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Secretary, any dissenting recommendations received from any such department or agency.

(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 30 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

VIOLATIONS

SEC. 11. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than five years, or both.

(b) WILLFUL VIOLATIONS.—Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes, shall be fined not more than five times the value of the exports involved or $100,000, whichever is greater, or imprisoned not more than ten years, or both.

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, shall be fined not more than five times the value of the exports involved or $100,000, whichever is greater, or imprisoned for not more than five years, or both. For purposes of this paragraph, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically

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designated by the head thereof, may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) Refunds.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) Actions for Recovery of Penalties.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) OTHER AUTHORITIES.—Nothing in subsection (c), (d), or (f) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

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(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 12. (a) GENERAL AUTHORITY.—To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and others writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that informaion obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552

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of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress, and all information obtained at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction. No such committee or subcommittee shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding thereof is contrary to the national interest.

(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2), the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

ANNUAL REPORT

SEC. 14 (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall

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cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry out section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(5);

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7;

(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an analysis of the time required to process license applications, the number and disposition of export license applications taking more than 90 days to process, and an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act;

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(17) *efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;*

(18) *any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;*

(19) *violations under section 11 and enforcement activities under section 12; and*

(20) *the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).*

(b) REPORT ON CERTAIN EXPORT CONTROLS.—*To the extent that the President determines that the policies set forth in section 3 of this Act requires the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.*

(c) REPORT ON NEGOTIATIONS.—*The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.*

REGULATORY AUTHORITY

SEC. 15. *The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.*

DEFINITIONS

SEC. 16. *As used in this Act—*

(1) *the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;*

(2) *the term "United States person" means any United States resident or national (other than an individual resident outside the the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;*

(3) *the term "good" means any article, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;*

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(4) *the term "technology" means the information and know-how that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves; and*

(5) *the term "Secretary" means the Secretary of Commerce.*

EFFECT ON OTHER ACTS

SEC. 17. (a) IN GENERAL.—Nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act. For purposes of this subsection, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

AUTHORIZATION OF APPROPRIATIONS

SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act unless previously and specifically authorized by law.

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(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(1) $8,000,000 for each of the fiscal years 1980 and 1981, of which $1,250,000 shall be available for each such fiscal year only for purposes of carrying out foreign availability assessments pursuant to section 5(f)(5), and

(2) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

SEC. 19. (a) EFFECTIVE DATE.—This Act shall take effect upon the expiration of the Export Administration Act of 1969.

(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued and take effect not later than January 1, 1980.

TERMINATION DATE

SEC. 20. The authority granted by this Act terminates on September 30, 1983, or upon any prior date which the President by proclamation may designate.

SAVINGS PROVISIONS

SEC. 21 (a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

SEC. 22. (a) Section 38(e) of Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out "sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969" and inserting in lieu thereof "subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act".

(b)(1) Section 103(c) of the Energy Policy and Conservation Act (42 U.S.C. 6212(c)) is amended—

(A) by striking out "1969" and inserting in lieu thereof "1979"; and

(B) by striking out "(A)" and inserting in lieu thereof "(C)".

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(2) Section 254(e)(3) of such Act (42 U.S.C. 6274(e)(3)) is amended by striking out "section 7 of the Export Administration Act of 1969" and inserting in lieu thereof "section 12 of the Export Administration Act of 1979".

(c) Section 993(c)(2)(D) of the Internal Revenue Code of 1954 (26 U.S.C. 993(c)(2)(D)) is amended—

(1) by srtiking out "4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))" and inserting in lieu thereof "7(a) of the Export Administration Act of 1979"; and

(2) by striking out "(A)" and inserting in lieu thereof "(C)".

INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

SEC. 23. (a) Section 9 of the International Investment Survey Act of 1976 (22 U.S.C. 3108) is amended to read as follows:

"AUTHORIZATIONS

"SEC. 9. To carry out this Act, there are authorized to be appropriated $4,400,000 for the fiscal year ending September 30, 1980, and $4,500,000 for the fiscal year ending September 30, 1981.".

(b) The amendment made by subsection (a) shall take effect on October 1, 1979.

MISCELLANEOUS

SEC. 24. Section 402 of the Agricultural Trade Development and Assistance Act of 1954 is amended by inserting "or beer" in the second sentence immmediately after "wine".

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

CLEMENT J. ZABLOCK,
DANTE B. FASCELL,
JONATHAN B. BINGHAM,
DON BONKER,
DONALD J. PEASE,
MICHAEL D. BARNES,
HOWARD WOLPE,
FLOYD J. FITHIAN,
WM. BROOMFIELD,
PAUL FINDLEY,
BENJAMIN A. GILMAN,
Managers on the Part of the House.

WILLIAM PROXMIRE,
HARRISON A. WILLIAMS, Jr.,
ADLAI E. STEVENSON,
PAUL E. TSONGAS,
JOHN HEINZ,
NANCY LANDON KASSEBAUM,
Managers on the Part of the Senate.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 737) to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

FINDINGS

The Senate bill stated that the ability of U.S. citizens to engage in international commerce is a fundamental concern of U.S. policy.

The House amendment stated that a large trade deficit weakens the value of the dollar, intensifies inflation, and heightens world economic instability; that poor export performance contributes to the trade deficit; that it is in the national interest to place a high priority on exports; and that minimization of restrictions on agricultural exports is of critical importance.

The committee of conference agreed to combine the Senate and House provisions.

POLICY

The Senate bill stated that it is U.S. policy to minimize uncertainties in export control policy and to restrict exports only after full consideration of domestic economic impact.

The House amendment stated that it is U.S. policy to restrict exports to countries violating the principles of the Monroe Doctrine; that exports not be controlled unless they are essential, effective, administered in accordance with due process, and justified in annual reports; and that restrictions on agricultural exports should be minimized.

The committee of conference agreed to combine the Senate and House policy statements, with the exception of the House reference to the Monroe Doctrine.

In deleting specific reference in the House amendment to the Monroe Doctrine, the conferees noted that the precise terms of that doctrine are unclear, and that section 3(b) of the act, making it U.S. policy to restrict exports "to further significantly the foreign policy of the United States * * *" encompasses the full range of U.S. foreign policy goals. It seemed inappropriate, therefore, to single out this historical element of U.S. foreign policy for particular emphasis. The conferees, however, do not wish to preclude use of the authorities of this act as a response to foreign military activities in the Western Hemisphere in contravention to U.S. foreign policy interests if the President determines that such a response is appropriate and consistent with the provisions of this act.

AUTHORITY

The Senate bill retained the basic authority of the act for the President to regulate any export to carry out policies of the act.

The House amendment retained the basic authority of the act, but separate of the authority to impose national security, foreign policy, and short supply controls into three different sections.

The committee of conference agreed to the House provision.

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ALLOCATION OF LICENSES UNDER SHORT-SUPPLY CONTROLS

The House amendment provided that factors on the basis of which licenses are allocated shall include the extent to which a country engages in equitable trade practices toward the United States and treats the United States equitably in times of short supply.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

POLICY TOWARD INDIVIDUAL COUNTRIES

(a) The Senate bill provided that export control policy toward individual countries shall be reviewed every 3 years in the case of multilateral controls and annually with respect to unilateral controls.

The House amendment provided that policy toward individual countries shall be reviewed periodically.

The committee of conference agreed to the Senate provision.

(b) The House amendment required denial of export licenses to any party responsible for diversion.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment specifying that the provision only covers diversions that are in violation of the terms of an export license and that additional steps may be directed to the party responsible for the diversion.

The committee of conference expects that the executive branch will institute procedures that assure that export licenses for controlled goods or technology will clearly specify that such goods and technology will be used only for uses which would not make a significant contribution to military potential. If the exported goods or technology is diverted to a significant military use in violation of license conditions, the President will be required to take appropriate actions.

This provision is not intended to limit in any way the President's discretion under the act to take appropriate action to terminate diversion of exported items to military use even if such diversion does not technically constitute a violation of license conditions. Obviously the President's freedom of action to protect U.S. national security is not constrained in situations in which, through oversight or negligence, the Government fails to specify conditions of end-use of exported or licensed goods or technology.

LICENSE DENIALS

The House amendment, in cases of license denials, required the Secretary to notify the applicant of modifications which would permit approval of the application, or indicate officials with whom the applicant could consult about modifications.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

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CRITICAL TECHNOLOGY

The Senate bill required that priority be given to preventing transfer of critical goods and technology, that the Secretary of Defense shall bear primary responsibility for identifying critical goods and technology, and that the Secretary of Commerce, in consultation with the Secretary of Defense, shall review and revise controls for the purpose of insuring that they cover and, to the maximum extent are limited to, critical goods and technology.

The House amendment found that controls should be focused primarily on, and implemented for, critical goods and technology, and required the Secretary of Defense to develop a list of critical technologies, which shall be completed and published by October 1, 1980, and become part of the Commodity Control List.

The committee of conference agreed to the House provision, with an amendment adding the Senate language regarding review of the control list and approval of the list by other agencies.

TERMINATION OF FOREIGN POLICY CONTROLS

The Senate bill provided that the President must extend foreign policy controls annually or they will expire.

The House amendment did not contain a comparable provision.

The committee of conference agreed to the Senate provision.

CRITERIA FOR FOREIGN POLICY CONTROLS

The Senate bill stated criteria that the President shall consider before imposing, increasing, or extending foreign policy controls.

The House amendment provided similar criteria.

The committee of conference agreed to combine the Senate and House provisions.

ALTERNATIVE MEANS

The Senate bill required the President to consider alternative means to further the purposes of foreign policy controls.

The House amendment required the President to determine, before imposing foreign policy controls, that reasonable efforts have been made to achieve their purposes through alternative means.

The committee of conference agreed to the House provisions.

CONSULTATION WITH INDUSTRY

The Senate bill required regular consultation with industry on export policy and foreign availability.

The House amendment required the Secretary of Commerce to consult with affected U.S. industries before imposing foreign policy controls.

The committee of conference agreed to combine both the Senate and House provisions.

CONSULTATION ON FOREIGN POLICY CONTROLS

(a) The Senate bill required the President to inform Congress when imposing, increasing, or extending foreign policy controls, and to justify such actions to the public to the extent possible.

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The House amendment did not contain a comparable provision.

The committee of conference agreed to the Senate provision.

(b) The House amendment required the President to notify Congress whenever he imposes a foreign policy export control, and to report to Congress on the reasons for the control and on his compliance with the requirements of the act in imposing the control, and provided that the control shall cease to be effective upon adoption of a concurrent resolution of disapproval within 60 days.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment removing the provision for a congressional veto by concurrent resolution.

In agreeing to eliminate the House provision for congressional veto by concurrent resolution of new forms of export controls for foreign policy purposes, the conferees emphasized their expectation that the executive branch would consult fully with Congress prior to employing any such controls, and agreed to give further consideration to a congressional veto mechanism in subsequent legislation in the event prior consultation on foreign policy controls proved inadequate under the provisions of this act.

EXCLUSION FOR FOOD AND MEDICINE

The House amendment provided that foreign policy control authority does not authorize controls on food and medicine, and stated the intent of Congress that foreign policy controls should not be applied to exports which would meet basic human needs.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment to make the exclusion apply only to medicine and medical supplies.

TRADE EMBARGOES

The House amendment provided that foreign policy control authority does not authorize total trade embargoes.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the Senate position.

However, the conferees agreed that, although certain authorities provided in this act are used to help implement total U.S. economic embargoes against several countries, authority for such embargoes is contained exclusively in section 5(b) of the Trading With the Enemy Act and in section 5(b) of the International Emergency Economic Powers Act. The conferees confirmed the fact that this act is not intended to constitute authority to impose total economic embargoes, but felt this was sufficiently clear that it was unnecessary to so provide in the act itself.

INTERNATIONAL OBLIGATIONS

The House amendment provided that certain limitations on foreign policy control authority shall not apply to the imposition of controls pursuant to certain international obligations.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment confining the coverage of the provision to treaties and international agreements.

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FOREIGN POLICY CONTROL LIST

The House amendment required that items subject to foreign policy control be identified as such on the list. The Secretary of State, with the concurrence of the Secretary of Commerce, is responsible for identifying items to be controlled for foreign policy purposes.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment changing the language on periodic revision of the control list.

In adopting the House language requiring identification of control list items subject to controls for foreign policy purposes, the conferees emphasized that all controlled items could continue to be included in a single list. The purpose of this provision is to assure that exporters may distinguish goods and technology controlled only for foreign policy purposes from those subject to control for national security purposes only, or for both national security and foreign policy purposes.

FOREIGN AVAILABILTY

The Senate bill provided that the President shall not impose national security or foreign policy controls on items where there is foreign availability in significant quantity and in quality comparable to availability from the United States, unless he determines that the absence of controls would be detrimental to national security or foreign policy.

The House amendment, with respect to national security controls, required the Secretary of Commerce to review foreign availability on a continuing basis and to remove validated license controls on, and approve license applications for, items which the Secretary determines to be available in fact from foreign sources to such an extent that controls would be ineffective, unless the President determines that the absence of controls would be detrimental to national security, in which case the President must publish that determination, its basis, and its estimated economic impact. With respect to foreign policy controls, the House amendment required the President to attempt to negotiate for the cooperation of foreign governments in controlling exports which the United States controls for foreign policy reasons.

The committee of conference agreed to accept the Senate general policy provision regarding foreign availability and the detailed House provisions with regard to national security controls and to foreign policy controls. The committee of conference agreed to delete the Senate provision requiring the President to ask for additional authority to secure cooperation in eliminating foreign availability should negotiations fail. In deleting this Senate provision, the committee of conference in no way wishes to imply that the President cannot invoke his existing authority to secure cooperation in the event that negotiations to eliminate foreign availability are unsuccessful. If the President believes that he requires additional authority to take effective action to that end, the committee of conference expects the President to advise the Congress and recommend appropriate legislation.

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NATIONAL SECURITY CONTROL LIST

The Senate bill provided that the Secretary of Commerce shall prepare and maintain the control list; the Secretary of Defense has primary responsibility for identifying critical technologies.

The House amendment provided that the Secretary of Commerce shall establish and maintain the list. The Secretary of Defense has primary responsibility for identifying items for inclusion on the list. Those items on which the Secretaries of Commerce and Defense concur would comprise the list.

The committee of conference agreed to the House provision.

The conferees intend this provision, as well as the provision agreed to with respect to the creation of a list of critical technologies, to serve to clarify the respective roles of the Secretary of Commerce and the Secretary of Defense in the list maintenance and review processes, but not to change fundamentally the current sharing of responsibilities between these two officials and their respective Departments. The conferees intend that the existing array of responsibilities for the administration of export controls within the executive branch remain unchanged and impose no new constraints on export licensing. The Secretary of Commerce retains the responsibility for maintaining the export control list; and, the responsibility of the Secretary of Defense to identify critical goods and technologies for possible inclusion on that list is made clear. If the Secretary of Defense and the Secretary of Commerce fail to concur with respect to inclusion of items on the list, the matter is referred to the President for resolution.

LIST REVIEW

The Senate bill required that the control list be reviewed every 3 years for multilateral controls and annually for unilateral controls.

The House amendment provided for continuous review of the list.

The committee of conference agreed to the House provision with an amendment adopting the Senate language on the period for review of control list.

In adopting the Senate's provision that the control list be reviewed every 3 years in the case of multilateral controls and annually in the case of unilateral controls, the conferees expressed the hope and expectation that such a specific mandate for control list review would prove more compelling than the less definite House provision calling for "continuous" review. Annual review of unilateral controls would insure a more frequent review of those controls than is now provided.

NOTIFICATION TO PUBLIC

The Senate bill required the Secretary of Commerce to keep the public fully apprised of changes in export control policy and procedures.

The House amendment required the Secretary of Commerce to publish any revision of the control list in the Federal Register and to specify whether it applies to national security or foreign policy controls.

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The committee of conference agreed to combine the Senate and House provisions.

TYPES OF EXPORT LICENSES

The Senate bill required establishment of a validated license, a qualified general license, a general license, and such other types of licenses the Secretary of Commerce may deem appropriate.

The House amendment authorized the establishment of the same three types of licenses, and such others as the Secretary considers necessary; the definitions of the licenses are somewhat different from those in the Senate bill.

The committee of conference agreed to the House provision, with technical changes simplifying the distinctions between the types of licenses.

USE OF EXPORT LICENSES

The Senate bill stated the intent of Congress that validated licenses be required insofar as possible only for items subject to multilateral controls. Use for other items must be reported to Congress annually. The Senate bill also stated the intent of Congress that qualified general license be used as much as possible for other items, and required establishment of procedures for qualified general license within 60 days of enactment.

The House amendment stated the intent of Congress to encourage use of qualified general license to the maximum extent practicable. The House amendment also provided that, insofar as possible, validated license shall be limited to items subject to multilateral controls which require the specific approval of the parties to the controls, to items monopolized by the United States or to items where the United States is seeking comparable controls by other countries, and that a qualified general license shall be used for items subject to multilateral controls but exportable at U.S. discretion.

The committee of conference agreed to the House provision, with an amendment adopting the Senate language on establishing procedures for approval of items that can be exported with a qualified general license, and allowing more time for establishing those procedures.

PROCEDURES FOR PROCESSING LICENSE APPLICATIONS

(a) The Senate bill required the Secretary of Commerce to consult with other agencies on licensing decisions; required a determination by the Secretary of Commerce within 10 days on whether an application must be submitted for multilateral review; provided 90 days for the Secretary of Commerce to approve or disapprove any application which does not require interagency review; and provided 90 days, following interagency review, for the Secretary of Commerce to resolve interagency disagreements and issue or deny a license.

The House amendment provided that authority to deny license applications may not be delegated below the level of Deputy Assistant Secretary; provided that any agency may determine the types of applications it wishes to review, and required the Secretary of Commerce to submit such applications to such agency; provided 30 days for the Secretary of Commerce to approve or disapprove any

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application which does not require interagency review; and provided three 30-day stages for consideration of license applications following interagency review: first, by Department of Commerce licensing officials; second, by the Secretary of Commerce; and third, by the President. If any agency appeals the licensing decision at any stage, the application goes to the next stage.

The committee of conference agreed to the Senate provision.

(b) The Senate bill required the President to notify Congress whenever he overrules a licensing recommendation made to him by the Secretary of Defense.

The House amendment did not contain a comparable provision.

The committee of conference agreed to the Senate provision.

(c) The House amendment provided a 60-day time limit for multilateral review of U.S. licensing cases and for U.S. review of other countries' licensing cases.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision with an amendment providing a national security waiver for the 60-day period and a notification procedure if the waiver is used.

(d) The Senate bill required records on information regarding the basis for and any dissent from an export license decision.

The House amendment did not contain a comparable provision.

The committee of conference agreed to the Senate provision with an amendment removing certain requirements for the recordkeeping.

(e) The Senate bill provided that applicants may petition the Secretary of Commerce requesting that licensing action be brought into conformity with requirements of the act.

The House amendment provided that, whenever an action on an application is not taken within the time limit specified, the applicant may petition the Secretary of Commerce for compliance with such time limits. If the Secretary does not take corrective action within 30 days or if such action has been taken but the Secretary does not so notify the applicant, the applicant may bring an action in U.S. District Court.

The committee of conference agreed to the House provision.

SHORT-SUPPLY MONITORING AUTHORITY

The Senate bill authorized short-supply monitoring, including data gathered under the new petitioning process.

The House amendment stated the same authorization, except the House amendment made no reference to data gathered pursuant to petitions for monitoring or controls.

The committee of conference agreed to the House provision.

EXPORTS OF CRUDE OIL

(a) The Senate bill permitted the export of oil after a period of 60 calendar days of congressional session unless both Houses of Congress adopt a concurrent resolution of disapproval.

The House amendment would permit the export of oil only if Congress passes a concurrent resolution approving such export within 60 days.

The committee of conference agreed to the House provision.

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(b) The House amendment stated that there should be a General Accounting Office (GAO) audit of any Presidential finding that export would lower refinery costs and wholesale and retail prices.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the Senate position.

In deleting the provision of the House bill requiring audit by the GAO of certain Presidential findings, the conferees noted possible difficulties for the GAO to perform such an audit, and the unlikelihood that the President would, in fact, make findings of lower costs and prices resulting from a proposed export of Alaskan oil. The action of the conferees, however, is not intended to preclude or inhibit any Member or committee of Congress from requesting the GAO to perform such an audit if and when the President were to issue such findings.

(c) The Senate bill exempted any country with which the United States has entered into a multilateral supply arrangement pursuant to section 251(d) of the Energy Policy and Conservation Act, and any country with which the United States entered into bilateral oil supply agreement prior to June 25, 1979, provided Congress is promptly notified of such agreements.

The House amendment exempted any country with which the United States entered into a bilateral oil supply agreement before May 1, 1979.

The committee of conference agreed to the Senate provision, with an amendment clarifying that Alaskan oil can be shared pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency. The exemption from export restrictions of any oil exported pursuant to a bilateral agreement is intended by the conferees to apply to the various interrelated arrangements and agreements between the United States and Israel entered into on March 26, 1979, in conjunction with the Treaty of Peace Between Israel and Egypt, and the subsequent agreement under which the United States will supply oil to Israel under circumstances specified in the agreement for 15 years (including the 5-year period covered by the United States-Israel oil arrangement of September 1, 1975).

The intent was expressed in House debate on this provision that it should not have the effect of prohibiting Alaskan crude in excess of 1.2 million barrels per day from being refined in the Netherland Antilles provided all end products of such refining are provided to the United States and the consumer benefit and all other requirements of this act are fulfilled.

EXPORTS OF REFINED OIL PRODUCTS

The House amendment prohibited the export of refined oil products, except after a period for congressional review and action and except for exports to a country of 250,000 barrels or less in a year and included a waiver of the provision if vital to the national interest.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment changing the period of delay to 30 days after notification of Congress, with authority for the President to waive the 30-day delay. The provision would apply not just to fully refined oil

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products, but also to partially refined oil products and to middle distillates.

HIDES

The House amendment stated that the Secretary of Agriculture shall collect data on export sales of animal hides and skins.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

CONGRESSIONAL APPROVAL OF AGRICULTURAL SHORT-SUPPLY CONTROLS

The Senate bill required a report to the Congress of any proposed use of authority to control export of agricultural commodities. Such proposed control would become effective only after 60 calendar days of continuous congressional session if neither House has passed a resolution of disapproval, or after one House had disapproved within 60 days and the other House disapproved such disapproval within an additional 30 days.

The House amendment retained existing law which requires notification to Congress of imposition of export controls on agricultural commodities for short supply or foreign policy purposes. Such controls cease if, within 30 days, Congress passes a concurrent resolution of disapproval.

The committee of conference agreed to the House provision.

DELEGATION OF AUTHORITY

The Senate bill authorized the President to delegate authorities conferred by the act, except to any official not confirmed by the Senate and except for any authority to overrule or modify a decision or recommendation of the Secretary of Commerce, State, or Defense.

The House amendment repealed a similar provision in existing law.

The committee of conference agreed to the Senate provision.

INDEXING

The Senate bill directed the Secretary of Commerce to adopt regulations to eliminate unnecessary delay in implementing decisions to remove or relax controls, and to consider removing site visitation requirements for goods removed from controls.

The House amendment authorized the Secretary of Commerce, where appropriate, to provide for annual increases in performance levels of licensed goods and technology and to remove from the list those goods and technologies which no longer meet such performance levels unless another government agency objects and the Secretary determines controls should be continued.

The committee of conference agreed to the House provision, with an amendment to include the Senate language on site visitation. The indexing provision is not intended to authorize the automatic decontrol of goods and technologies in accordance with prior projections of obsolescence. The committee of conference expects that, prior to effectuating any scheduled removal or relaxation of a control, a current appraisal will be made to assure that prior

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projections have actually materialize. The committee of conference also wishes to make it clear that the indexing provision is in no way to be interpreted to authorize decontrol of items which are obsolete by U.S. standards, but would nevertheless make a significant contribution to the military potential of the Soviet Union or other adversary nation.

EXPORT OF HORSES

The Senate bill retains the existing provision of law prohibiting export of horses by sea except by waiver of the Secretary of Commerce based upon determination that horses are not being exported for purposes of slaughter.

The House amendment repealed a similar provision of existing law.

The committee of conference agreed to the Senate provision.

CRIME CONTROL

The Senate bill authorized the President to add other countries to the existing list of countries exempted from the requirement of validated license for export of any crime control and detection instruments.

The House amendment retained existing law which exempts only NATO countries, Japan, Australia, and New Zealand.

The committee of conference agreed to the Senate provision.

BARTER

The House amendment authorized exemption from any short supply or national emergency controls of goods exported pursuant to a barter agreement provided the Secretary of Commerce makes certain findings regarding the effects of such a barter agreement.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment removing the exemption for barter agreements from national emergency controls.

RED CEDAR

The House amendment contained a provision prohibiting, after a 3-year phase-out period, the export of unprocessed western red cedar harvested on State or Federal lands. Exports during the 3-year phase-out period are to be allocated on the basis of prior history of exports and other appropriate factors.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

TERRORISM

The Senate bill prohibited the approval of a license for the export of a good or technology to any country, if the Secretary of State has made the following determinations:

(1) The country has demonstrated a pattern of support for actions of international terrorism; and

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(2) the export would make a significant contribution to the military potential of the country or would enhance its ability to support international terrorism.

The Senate bill also permitted a Presidential waiver of the prohibition if he determines that it is in the national interest to permit the export.

The House amendment included a similar provision with the same determinations, but instead of a prohibition, required that the House Foreign Affairs and the Senate Foreign Relations Committees be notified before issuance of a license for the export of a good valued at more than $7 million.

The committee of conference agreed to the House provision with an amendment changing the notification to the Senate Foreign Relations Committee to a notification to the Senate Committee on Banking, Housing, and Urban Affairs.

CIVIL AIRCRAFT EQUIPMENT

The House amendment provided that any product which is standard equipment in civil aircraft and is an integral part of such aircraft, and which is to be exported to a country other than a controlled country, shall be subject to the Export Administration Act rather than to the Arms Export Control Act.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

It is the intent of the conferees that civil training aircraft below 600 horsepower now subject to control under the Arms Export Control Act, as well as larger aircraft with certain integral components now subject to control under the Arms Export Control Act, shall henceforth be transferred to and subject to control only under the Export Administration Act. The conferees noted, however, that this provision should not be implemented in such a manner as to ease restrictions on the sale of any aircraft to South Africa.

NONPROLIFERATION CONTROLS

The House amendment stated that nothing in new sections 5 and 6 of the Export Administration Act shall be construed to supersede the procedures pursuant to the Nuclear Non-Proliferation Act of 1978. New section 10 (licensing procedures) of the Export Administration Act shall apply, when consistent, to export licenses referred under the procedures established pursuant to section 309(c) of the Nuclear Non-Proliferation Act, to the Subgroup on Nuclear Export Coordination or any other interagency group. If a decision is not rendered under these procedures within 180 days, the applicant shall have the right of appeal and court action provided for in this bill.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

PETITIONS FOR MONITORING OR CONTROLS

The Senate bill (1) established a formal procedure by which petitions can be filed with the Secretary of Commerce for consideration of monitoring or export controls on any material or commodity for which an increase in domestic prices or a domestic shortage

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has or may have a significant adverse effect on the national economy or any sector thereof; (2) stated that if a petition has been considered and in the absence of significantly changed circumstances, the Secretary may determine that a subsequent petition does not merit consideration; (3) stated that if necessary, the Secretary may impose temporary monitoring or controls during the consideration of a petition, and interested persons shall have an opportunity to comment on such actions; and (4) specifically stated that the procedure did not apply to any agricultural commodity.

The House amendment (1) contained a similar provision regarding the procedure by which petitions can be filed with the Secretary of Commerce, except that the House provision pertained only to metallic material capable of being recycled and with respect to which they may be a significant adverse effect on the national economy or any sector thereof because of serious inflationary impact due to increased prices or a domestic shortage resulting from exports; (2) included a similar provision regarding the consideration of subsequent petitions in the absence of significantly changed circumstances, except that it limited this authority to a period of 6 months following the consideration of a petition; and (3) contained a similar provision regarding the imposition of temporary monitoring or controls during the consideration of a petition, except it did not specifically provide for comment by interested persons.

The committee of conference agreed to the House provision with an amendment removing the reference to inflationary impact due to increased prices in the end product.

CONSULTATIONS AND STANDARDS

The Senate bill retained from existing law the provision that, in determining what shall be controlled or monitored, consultations shall be held with other governmental departments and agencies, and with private industry.

The House amendment deleted this provision from the act.

The committee of conference agreed to the House provision.

ENERGY CONTROLS

The Senate bill retained the provision of the act which required the Secretary of Commerce to consult the Secretary of Energy with respect to monitoring of exports related to energy, and added to the provision the same consultation requirement with respect to the imposition of export controls on energy related exports.

The House amendment retained the provision regarding monitoring without adding the reference to export controls.

The committee of conference agreed to the Senate provision.

PRIVATE CHANNELS

The Senate bill retained the provision of the existing act which provided that, in authorizing exports, full utilization of private competitive trade channels shall be encouraged.

The House amendment deleted this provision from the act.

The committee of conference agreed to the House provision.

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TECHNICAL ADVISORY COMMITTEES (TAC'S)

(a) The Senate bill retained the provision of the act authorizing Technical advisory committees to advise the Secretary of Commerce.

The House amendment retained the same provision and added that the TAC's shall also advise the Secretary of Defense.

The committee of conference agreed to the House provision.

(b) The Senate bill retained the provision of the act which authorizes reimbursement of expenses incurred by members of the TAC's.

The House amendment deleted this provision from the act.

The committee of conference agreed to the Senate provision.

(c) The Senate bill retained the provision of the act which provides that each TAC shall elect a chairman and shall meet at least every 3 months, unless the chairman determines otherwise, and each TAC shall be terminated after 2 years unless the Secretary determines otherwise.

The House amendment deleted this provision from the act.

The committee of conference agreed to the Senate provision.

(d) The Senate bill stated that upon certification of foreign availability by a TAC, the Secretary shall investigate and report to the TAC on whether the Secretary concurs with the certification. If the Secretary concurs, the Secretary shall submit a recommendation to the President who shall act in accordance with section 4(a)(2)(E) of the Senate bill relating to foreign availability determinations.

The House amendment stated that upon such certification of foreign availability, the Secretary shall take steps to verify such availability, and upon such verification shall remove the requirement for a validated license, unless the President determines that the absence of controls would prove detrimental to the U.S. national security, upon which decision the President shall publish his determination along with a statement of its basis and its estimated economic impact.

The committee of conference agreed to the House provision, with a technical amendment.

(e) The Senate bill provided that the Secretary of Defense shall have the same authorities and responsibilities as the Secretary of Commerce with respect to the establishment and receiving of advice from TAC's.

The House amendment did not contain a comparable provision.

The committee of conference agreed to the House position.

VIOLATIONS

The House amendment stated that any person who is issued a validated license and who willfully fails to report a diversion shall be fined the sum of the profit from the sale or $100,000, whichever is greater, or imprisoned for up to 5 years.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment specifically tying the provision to violations of the conditions of an export license and changing the fine to five times the value of the export or $100,000, whichever is greater.

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CONFIDENTIALITY

The Senate bill provided that the enactment of the new confidentiality provision shall not affect any judicial proceeding under section 552 of title 5, U.S. Code (Freedom of Information Act) to obtain access to boycott reports submitted prior to October 31, 1976 which was pending on May 15, 1979.

The House amendment provided in its savings provisions, that nothing in this act shall affect any investigation, suit, action, or other judicial proceeding commenced under the Export Administration Act or the Freedom of Information Act which is pending when this act takes effect.

The committee of conference agreed to the Senate provision with the understanding that nothing in this act restricts the publication of boycott reports, including voluntary periodic surveys made by U.S. corporations of their foreign subsidiaries.

SIMPLIFYING DOCUMENTATION

(a) The Senate bill moved from this section of the Act to the section detailing in the annual report the requirement for a report on action taken to reduce the cost of recordkeeping and export documentation.

The House amendment retained this reporting requirement in this section, which requires that the report be made in the first annual report made after the action is taken.

The committee of conference agreed to the Senate provision.

(b) The House amendment retained, with technical changes, the provision in the act requiring the Department of Commerce to seek ways to facilitate compliance with the act by simplifying the rules and regulations, or clarifying the export control lists.

The Senate bill repealed this provision.

The committee of conference agreed to the House provision.

ADMINISTRATIVE PROCEDURES

The Senate bill stated that it is the intent of Congress that there be a meaningful opportunity for public comment on all regulations imposing controls on exports before those controls take effect.

The House amendment did not contain a comparable provision.

The committee of conference agreed to the Senate provision.

ANNUAL REPORT

The Senate bill required an annual report on the implementation of the act. The annual report called for in the Senate bill required the following items not included in a similar House amendment; (1) Efforts to keep the business sector informed about policies and procedures; (2) delegations of authority by the President under section 4(k) of the Senate bill; (3) the progress of negotiations with COCOM under section 4(n) of the Senate bill; and (4) revisions to simplify reporting requirements prescribed in section 11(d) of the Senate bill.

The House amendment required that an annual report on the administration of the act during the preceding fiscal year be submitted no later than December 31. The House annual report re-

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quired the following item not included in the Senate bill: The effectiveness of export controls imposed under section 6 for foreign policy purposes.

The committee of conference agreed to combine the Senate and House provisions.

DEFINITIONS

The Senate bill included a definition of "goods" and of "technology".

The House amendment included a definition of the "Secretary".

The committee of conference agreed to both the Senate and the House provisions.

REGULATORY AUTHORITY

The House amendment contained a separate section stating that the President and the Secretary may issue rules and regulations, and that they may apply to the financing, transporting, or other servicing of exports.

The Senate bill did not contain a separate section for this authority.

The committee of conference agreed to the House provision.

AUTHORIZATION OF APPROPRIATIONS

(a) The Senate bill authorized $8 million for fiscal year 1980.

The House amendment authorized $7.070 million for fiscal year 1980 and $7.777 million for fiscal year 1981.

The committee of conference agreed to combine the two provisions into a 2 year authorization, with $8 million authorized for each fiscal year.

(b) The Senate bill stated that $1.250 million of that sum shall be available only for establishing and maintaining the capability to make foreign availability assessments.

The House amendment did not contain a comparable provision.

The committee of conference agreed to the Senate provision, with an amendment making it applicable for both fiscal years 1980 and 1981.

(c) The Senate bill authorized $2.5 million for the Department of Defense for fiscal year 1980 for the purposes of carrying out its functions under section 4(a).

The House amendment did not contain a comparable provision.

The committee of conference agreed to the House position, with the understanding that funding for this purpose should be made available within the limits established in the regular Department of Defense authorization.

(d) The House amendment stated that the Secretary of State may use funds appropriated to the Department of State to carry out the provisions of section 5(k) of the act.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the Senate position.

EFFECTIVE DATE

The House amendment stated that the amendments made by sections 107 (domestic crude oil provision) and 108 (repealing the

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boycott of Uganda) shall take effect on the date of enactment of this act.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the Senate position.

EFFECTIVE DATE OF PROCEDURES

The House amendment delayed the effective date of the new export licensing procedures under new section 10 until July 1, 1980.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision, with an amendment to make January 1, 1980, the effective date for the regulations implementing the procedures for petitioning for monitoring or controls of certain metallic materials.

SAVINGS PROVISION

The House amendment stated that the provisions of this act shall not apply to any administrative proceedings or any application for a license pending at the time this act takes effect.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

INTERNATIONAL INVESTMENT SURVEY ACT

The House amendment authorized $4.4 million for fiscal year 1980 and $4.5 million for fiscal year 1981 for implementation of the International Investment Survey Act.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

PUBLIC LAW 480

The House amendment added "beer" to the provision in Public Law 480 that allows the authorities of the act to be used for promotion of export of wine.

The Senate bill did not contain a comparable provision.

The committee of conference agreed to the House provision.

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WM. BROOMFIELD,
PAUL FINDLEY,
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WILLIAM PROXMIRE,
ADLAI STEVENSON,
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PAUL TSONGAS,
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Managers on the Part of the Senate.

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